Jurisdictional Statement

81-364

Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

No. ..-...

IN THE

Supreme Court of the United States

October Term, 1981

MERLE E. HOLMES, individually and on behalf of all others similarly situated,

Appellants.

vs.

CITY OF LOS ANGELES,

Appellee.

On Appeal from the Court of Appeal of the State of California, Second Appellate District, Division Four.

JURISDICTIONAL STATEMENT.

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Question Presented.

Whether or not the provisions of Article XVII of the Los Angeles City Charter, and the provisions of Article XVIII of the New Pension System of the Los Angeles City Charter are violations of the Equal Protection Clause of the 14th Amendment to the United States Constitution.

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MERLE E. HOLMES, individually and on behalf of all others similarly situated,

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Appellee.

JURISDICTIONAL STATEMENT.

Statement of Ground on Which Jurisdiction Is Invoked.

The ground on which the jurisdiction of this Court is invoked is that there has been drawn in question the validity of a statute of the State of California on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity.

(i) Nature of Proceeding.

The nature of the proceeding below was a class action brought by MERLE E. HOLMES on his own behalf and as representative of, and on behalf of the class, defined below, for damages in an amount equal to the sums deducted from the salary of the class members and contributed to the pension system, and not refunded; for reasonable attorney's fees, for payment of Appellants' attorney's fees out of the moneys recovered for the joint benefit of the members of the class; and for costs of suit incurred.

The class consists of former employees of the Fire Department of the City of Los Angeles and of the Police Department of the City of Los Angeles who, while so employed, were members of the Fire and Police Pension System established under the provisions of Article XVII of the Los Angeles City Charter, or members of the New Pension System under the provisions of Article XVIII of said Charter, and whose service terminated for any reason whatever, other than retirement on a service pension or a disability pension, and who had, while so employed, contributed funds by means of salary deductions to the Fire and Police Pension System established under the provisions of Article XVII of the City Charger, or the New Pension System, under provisions of Article XVIII of said Charter, and which funds were not returned.

The subclasses within the class are as follows:

a) Those persons described in the above class who were members of the Fire and Police Pension System established under the provisions of Article XVII of the Los Angeles City Charter.

b) Those persons described in the above Class who were members of the New Pension System under the provisions of Article XVIII of the Los Angeles City Charter.

The issue is whether or not the provisions of Article XVII of the Los Angeles City Charter, and the provisions of Article XVIII of the New Pension System of the Los Angeles City Charter are violations of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

(ii) Date of Entry of Judgment; Denial of Hearing.

The judgment sought to be reviewed is dated March 24, 1981.

A hearing in the California Supreme Court was denied on May 20, 1981.

The Notice of Appeal herein was filed on July 31, 1981, in the Court of Appeal of the State of California with a copy filed in the California Supreme Court.

(iii) Statutory Provisions Conferring Jurisdiction.

The jurisdiction of this Court is invoked under Section 1257(2) of Title 28 of the USC.

(iv) Cases Which Sustain Jurisdiction.

A decision of a state court may be reviewed on appeal where it sustains as constitutional a city ordinance.

Cuyahoga River Power Co. v. Akron, 240 U.S. 462, 60 L.Ed. 743, 36 S.Ct. 402;

Reinman v. Little Rock, 237 U.S. 171, 59 L.Ed. 900, 35 S.Ct. 571.

A local ordinance is deemed a state statute for purposes of invoking the United States Supreme Court's jurisdiction under 28 USC Section 1257(2), conferring upon the United States Supreme Court jurisdiction to review final state court judgments where the decision is in favor of the validity of a state "statute" challenged as repugnant to the United States Constitution or laws.

Erznoznik v. Jacksonville, 422 U.S. 205, 45 L.Ed.2d 125, 95 S.Ct. 2268.

Provisions of City Charter.

The provisions involved are found in the Los Angeles City Charter.

The provisions that are pertinent with respect to the contributions made by Appellants are contained in Sections 186½ (amended in 1967) and 190.10. Section 186½ before its amendment, effective January 26, 1967 read as follows:

"Sec. 186½. Each member of the Fire and of the Police Department included within the pension provisions of this article shall contribute to said fire and

police pension fund in the manner as hereinafter in this section provided.

"The administrative head of each such department shall cause to be shown on each and every payroll of said department a deduction of six per cent (6%) of the amount of salary, as shown on each such payroll, of each such member whose name appears thereon, and shall certify to the Controller on each such payroll the amount to be deducted from the compensation of each such member whose name appears thereon, and shall cause to be drawn a payroll check in favor of the Board of Pension Commissioners for the total amount of deduction shown on each payroll of such department, and said board shall deposit said payroll check to the credit of the fire and police pension fund. It shall be the duty of the administrative head of each department to cause to be furnished a copy of each and every such payroll hereinbefore mentioned to the said Board of Pension Commissioners.

"Each member shall be deemed to consent and agree to each deduction made as provided for herein, and the payment of each payroll check to such members shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such member during the period covered by such payroll, except such claims as such member may have to the benefits provided for in this article."

Section 186½ currently provides and has so provided since January 26, 1967:

> "Sec. 186½. Each member of the Fire and of the Police Department included within the pension provisions of this article shall contribute to said Fire and Police Service Pension Fund in the manner as hereinafter in this section provided.
>
> "The administrative head of each such department shall cause to be shown on each and every payroll of said department a deduction of six per cent (6%) of the

amount of salary, as shown on each such payroll, of each such member whose name appears thereon, and shall certify to the Controller on each such payroll the amount to be deducted from the compensation of each such member whose name appears thereon, and shall cause to be drawn a payroll check in favor of the Board of Pension Commissioners for the total amount of deduction shown on each payroll of such department, and said board shall deposit said payroll check to the credit of the Fire and Police Service Pension Fund. It shall be the duty of the administrative head of each department to cause to be furnished a copy of each and every such payroll hereinbefore mentioned to the said Board of Pension Commissioners.

"Each member shall be deemed to consent and agree to each deduction made as provided for herein, and the payment of each payroll check to such member shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such member during the period covered by such payroll, except such claims as such member may have to the benefits provided for in this article, and no such member or former member ever shall be entitled, for any cause or reason whatsoever, to be paid any of the monies which have been or shall be deducted from his salary as hereinabove provided. [Amended, 1967]"

Section 190.10 provides:

"Sec. 190.10. Deduction from Salaries of System Members

"Deductions shall be made from the salaries of System Members, and such deductions shall be deposited to the credit of and paid into the New System Service Pension Fund, all as hereinafter provided in this section.

"The administrative head of the Fire Department and of the Police Department shall cause to be shown on

each and every payroll of such department a deduction equal to the sum of the following items:

"(1) 6% of the amount of salary, as shown on each such payroll, of each System Member whose name appears thereon; and

"(2) That percentage of the amount of salary, as shown on each such payroll, of each System Member whose name appears thereon, but not to exceed 1% thereof, which shall be equal to ½ of the cost of the benefits provided by Section 190.14 as shall be determined by the Board upon an actuarial valuation obtained by it pursuant to Section 190.08, provided, however, that from the effective date of this Article through June 30, 1968, a deduction therefor of 1% of the salary of each System Member shall be made.

"The Board, from time to time, shall certify in writing to the administrative head of each such department and to the Controller any change in the deductions to be made pursuant to (2) above, and any change shall become effective as of the next following July 1.

"The administrative head of each such department shall certify to the Controller on each such payroll the amount to be deducted from the salary of each System Member whose name appears thereon, and shall cause to be drawn a payroll check in favor of the Board for the total amount of deductions from the salaries of such System Members as shown on each payroll of such department, and the Board shall deposit said payroll check to the credit of the New System Service Pension Fund. It shall be the duty of the administrative head of each such department to cause to be furnished to the Board a copy of each and every such payroll.

"Each System Member shall be deemed to consent and agree to each deduction as provided herein, and the payment of each payroll check to such System Member

shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such System Member during the period covered by each such payroll check, except such claims as such System Member may have to the benefits provided by this Article, and no System Member, former System Member or Retired Member ever shall be entitled, for any cause or reason whatsoever, to be paid any of the moneys which shall be deducted from his salary as hereinabove provided. [Added, 1967]"

Statement of the Case.

The class action was brought for damages in an amount equal to the sums deducted from the salary of the class members and contributed to the pension system, and not refunded; for reasonable attorney's fees, for payment of Appellants' attorney's fees out of the moneys recovered for the joint benefit of the members of the class; and for costs of suit incurred.

Appellants contended that the provision of Article XVII of the Los Angeles City Charter and the provision of Article XVIII of the New Pension System of the Los Angeles City Charter are violations of the Equal Protection Clause of the 14th Amendment to the United States Constitution.

The action was tried by the court without a jury. The judgment of the trial court was in favor of Respondent and stated as follows:

"IT IS ORDERED, ADJUDGED AND DECREED that the provisions of Section 186½ and those of Section 190.10 of the Charter of the City of Los Angeles which pertain to the deductions from salaries of members of the 'Fire and Police Pension System' and the 'New Pension System' respectively, of the City of Los Angeles, and to the nonrefundability of monies so deducted to the members upon the termination of their

employment, do not violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the employment of Fire and Police personnel by the City of Los Angeles is not under a contract of adhesion.

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the judgment of this court be in favor of defendants and against plaintiffs."
(CT 125)

The Court of Appeal of the State of California, Second Appellate District, Division Four, affirmed the judgment of the trial court. The opinion of the Court of Appeal is attached hereto in the Appendix.

The Supreme Court of the State of California denied a hearing on May 20, 1981.

The Federal Question Is Substantial.

The question presented involves a city charter which prohibits the members of the class from obtaining a refund of their contributions to the pension system prior to retirement. The class members are the only City of Los Angeles employees who do not get back employee contributions to their pension system prior to retirement.

Conclusion.

For the foregoing reasons, it is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,

LOCKE, LOCKE & RUDMAN

By BERRY D. LOCKE,

Counsel for Appellants.

Appendix.

Copies of the opinion of the Court of Appeal of the State of California, and of the Notice of Appeal herein are attached hereto.

APPENDIX.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Four.

Merle E. Holmes, individually and on behalf of all others similarly situated, Plaintiffs and Appellants, vs. City of Los Angeles, Defendant and Respondent. 2 CIV. NO. 58446. (Super. Ct. No. CA 000278).

FILED: March 24, 1981.

APPEAL from a judgment of the Superior Court of Los Angeles County. Jack T. Ryburn, Judge. Affirmed.

Locke, Locke & Rudman and Berry D. Locke for Plaintiffs and Appellants.

Burt Pines, City Attorney, Siegfried O. Hillmer, Assistant City Attorney, and Mary Jo Curwen, Deputy City Attorney, for Defendant and Respondent.

This class action on behalf of former city police officers and firefighters seeks refund of amounts deducted from their salaries and placed in one of the two pension plans covering such employees. The case was tried before the court sitting without a jury, resulting in findings of fact and a judgment in favor of the city. This appeal is from that judgment.

Police officers and firefighters employed by the City of Los Angeles are covered by one of two pension systems. Before 1967, all police officers and firefighters were members of the Fire and Police Pension System established under article XVII of the city charter. In 1967, the New Pension System was established under article XVIII by amendment of the city charter. New employees thereafter became members of the New Pension System, and those already employed could elect to stay with the older system or join the

new one, which provided for increased salary deductions and increased benefits.

For purposes of this appeal, the salient features of those two pension systems are the same. They are as follows:

1. From the beginning of employment, the employee is entitled to receive a disability retirement pension after a service-connected disability.

2. After five years' employment, the employee is entitled to receive a disability retirement pension upon a disability that is not service connected.

3. After 20 years' employment, the employee is entitled to retire voluntarily with a pension in an amount based upon the number of years of service.

4. Benefits are payable to the family upon the death of a member from the beginning of employment in case of service-connected death or beginning after five years' service if the death is not service connected.

5. A percentage of each employee's salary is deducted and placed in the Service Pension Fund, which is used only to pay service pensions based on 20 or more years of service. Other benefits are paid from taxes and other specified sources.

The feature of these plans that is the subject of this appeal is that the employee contributions are not refundable. Thus, a police officer or firefighter who leaves the department without having become entitled to benefits under the pension system does not receive a check for the amount of accumulated contributions. The class with which this action is concerned is defined to include all former members of the police and fire departments whose employment ended for any reason other than retirement on a service pension or disability pension.

Prior to 1967, article XVII of the city charter contained no express prohibition against refund of contributions, but in *Grace v. City of Los Angeles* (1967) 249 Cal.App.2d 577, the court held that, in the absence of any authorization for refund, the members were not entitled to recover their contributions. In 1967, section 186½ (a part of art. XVII of the charter) was amended to provide "no such member or former member ever shall be entitled, for any cause or reason whatsoever, to be paid any of the moneys which have been or shall be deducted from his salary as hereinabove provided."

Similar language is included in section 190.10, which is a part of the article XVIII pension system.

Plaintiff asks that this court overturn the no refund provision of the city charter upon two grounds: He asserts that (1) the charter is "a contract of adhesion" and (2) the charter denies equal protection of the law.

The term "contract of adhesion" generally "signifies a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." (*Neal v. State Farm Ins. Cos.* (1961) 188 Cal.App.2d 690, 694.)

In some cases growing out of that kind of contract, fairness will require that ambiguities in the contract be construed strictly against the party who drafted it. (Id., at p. 695.) In other cases a provision in the contract will be held void because it defeats the reasonable expectation of the adhering party. (See *Steven v. Fidelity & Casualty Co.* (1962) 58 Cal.2d 862, 879.) A contract of adhesion receives special scrutiny by courts not because the terms were established unilaterally, but because some provision in the contract may "unexpectedly and often unconscionably limit the obliga-

tions and liability of the party drafting the contract." (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 710.)

As the court pointed out in *Wheeler v. St. Joseph Hospital* (1976) 63 Cal.App.3d 345, 357, "a determination that a contract is adhesive is merely the beginning and not the end of the analysis insofar as enforceability of its terms is concerned. Enforceability depends upon whether the terms of which the adherent was unaware are beyond the reasonable expectations of an ordinary person or are oppressive or unconscionable." (See also *Yeng Sue Chow v. Levi Strauss & Co.* (1975) 49 Cal.App.3d 315, 325.)

Any charter, ordinance or statute which establishes the terms upon which public employees are compensated might be described as a contract drafted by the stronger party, which the weaker party—the applicant for employment—must accept or reject without any opportunity to negotiate. But that circumstance does not necessarily entitle the employees to judicial assistance in improving the terms on which the employment was offered.

In the present case there is no problem of ambiguity. The Los Angeles City Charter expressly states that the employee contributions will not be refunded if the employment is terminated before the employee has qualified for a pension. Plaintiff's theory appears to be that a pension system, however beneficial in other respects, defeats the reasonable expectations of the employees if it does not provide for a return of contributions.

The pension system in which plaintiff was enrolled was a part of the whole compensation package for police officers and firefighters. (See *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863.)

Ordinarily, it may be assumed that anyone who considers applying for employment as a police officer or a firefighter will have ample opportunity to inquire about and consider the rate of compensation and the nature of the auxiliary benefits provided, to the extent that the applicant is interested in knowing about them. Certainly there is no evidence in the record that the City of Los Angeles forecloses such inquiry.

Plaintiff testified that he knew nothing at all about the pension plan or that there would be a payroll deduction for it until he received his first paycheck. This, of course, is no evidence that he had no opportunity to inform himself before applying for the job. However, the testimony does indicate that at the time plaintiff accepted employment he had no expectation at all with respect to a refund. The most reasonable inference is that at the time he accepted employment he cared so little about the terms and considerations of the retirement system that he made no inquiry at all.

The city produced testimony that, at the police academy, new officers were given instruction concerning pension benefits, including the fact that contributions were not refundable. A battalion chief of the fire department testified that, ever since he had commenced his service in 1959, an employee benefit pamphlet was furnished to each new employee. This pamphlet explained that contributions would not be refunded. The decision of the trial court in this case implies a finding of actual notice to all new employees.

Even without such evidence, there is no basis for asserting that the absence of a refund provision in the city charter frustrates any reasonable expectation of the members of fire and police pension systems. What is a reasonable expectation depends upon the nature of the relationship between

the parties, and not upon what particular individuals know or expect.

The contention made by plaintiff in this case is no different in substance from that raised in *Goodwin v. Board of Trustees* (1946) 72 Cal.App.2d 445. In that case a fireman of the City of Oakland who had resigned prior to becoming eligible for a pension sought recovery of his contributions upon the theory that he had received nothing for his money. In rejecting that contention, Justice Peters wrote, at pages 450-451: "Nor is it correct to say that during the period 1933-1943 the firemen received nothing for their deductions unless they retired. The plan set up by the charter did not only provide for retirement based upon age and years of service. In addition it provided for retirement, regardless of age and years of service, for a fireman disabled in the course of his employment. It also called for pensions for the families of firemen if the firemen were killed in the service. To this extent the plan called for a limited type of protection in the nature of accident insurance. The deductions made each month were paid, therefore, not only towards an ultimate annuity to be paid upon reaching the age of retirement, but also for this accident insurance. As long as there was no provision in the charter for a refund of these funds in the event of voluntary resignation before reaching retirement age, it must be held that under the type of plan here involved the deductions were in the nature of premiums for the types of protection above outlined."

The existing Los Angeles pension system for police officers and firefighters differs from the Oakland system discussed in the *Goodwin* case in that the Los Angeles employee contributions go into a fund used only to pay benefits based on years of service. A separate fund, created from tax revenues and other sources, pays for the disability and death benefits. Nevertheless, the pension system is a part

of the employee's compensation, all of which is relevant to any evaluation of the employee's reasonable expectations.

Almost any pension system is, by its nature, a complex structure of funding, benefits payable, and the conditions of vesting and payment of benefits to the employee member and the employee's survivors. These systems vary widely, one from another. It is hardly reasonable for any employee or prospective employee to have an expectation of what the system will cost or what it will provide without making inquiry from a knowledgeable source.

Considering the nature of the fire and police pension systems, and the benefits which the city charter provides for the members of the systems, the plaintiff's claim of frustrated expectations fails.

Plaintiff's "equal protection" argument seems to be based entirely upon the fact that the pension systems for the Department of Water and Power employees and for the other civilian employees of the city do provide a refund of contributions if the employee resigns without having become eligible for other benefits. Although plaintiff's counsel has cited cases discussing the concept of "equal protection" generally, no authority has been cited for the assumption that the Constitution requires that the terms of employment for police and firefighters be "equal" to or measured by some of the benefits provided for other employees.

In *Grace v. City of Los Angeles, supra,* 249 Cal.App.2d 577, the contention was made that the members of the uniformed services were entitled to a refund of contributions because the members of the other city retirement systems had this benefit. In rejecting that concept, the court said at page 582: "An exhaustive comparison of the three systems is not necessary in this opinion since it is clear from that which has been stated hereinabove that the pension system

for firemen and policemen is substantially different from the other two systems and affords its members greater protection in the period of service prior to the normal retirement date. Such added protection is, of course, warranted because of the hazards of employment to which a fireman or police officer is subjected."

We can only add that, as between the uniformed services on the one hand, and the civilian services on the other, the work is different, the hazards are different, the normal retirement dates are different, the benefits are different and the cost of providing benefits is different. There is no rational basis for inferring a constitutional requirement that one particular feature of the fire and police system must be identical with the corresponding feature of the civilian systems.

In *Saal v. Workmen's Comp. Appeals Bd.* (1975) 50 Cal.App.3d 291, 299-300, discussing the special benefits created by statute for certain classes of peace officers, we pointed out that the benefits payable to one class of employees did not set a standard which the state was required to apply to some other groups as well.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION.

Files, *P.J.*

We Concur:

Kingsley, *J.*

Laidig, *J.**

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*Assigned by the Chief Justice of California.

Notice of Appeal to the Supreme Court of the United States.

In the Court of Appeal of the State of California, Second Appellate District, Division Four.

Merle E. Holmes, individually and on behalf of all others similarly situated, Plaintiffs and Appellants, vs. City of Los Angeles, Defendant and Respondent. 2 Civ. No. 58446.

Filed: July 31, 1981.

NOTICE IS HEREBY GIVEN that MERLE E. HOLMES, individually and on behalf of all others similarly situated, the plaintiffs and appellants herein, hereby appeal to the Supreme Court of the United States from the final judgment of this Court entered on March 24, 1981, a hearing on which was denied by the California Supreme Court on May 20, 1981.

This appeal is taken pursuant to Section 1257(2) of Title 28 of the United States Code.

Dated: July 30, 1981.

LOCKE, LOCKE & RUDMAN

By /s/ Berry D. Locke

BERRY D. LOCKE

Attorneys for Plaintiffs and Appellants.

PROOF OF SERVICE BY MAIL.

State of California, County of Los Angeles

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

332 South Beverly Drive, Beverly Hills, California, 90212.

On July 30, 1981, I served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES on the interested parties in said action, that all parties to be served have been served, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Beverly Hills, California addressed as follows:

IRA REINER, City Attorney
SIEGFRIED O. HILLMER, Deputy City Attorney
MARY JO CURWEN, Deputy City Attorney
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Los Angeles, California 90012

Clerk, Court of Appeal
Second Appellate District, Division Four
3580 Wilshire Boulevard, Room 301
Los Angeles, California 90010

Supreme Court of the State of California
3580 Wilshire Boulevard, Room 213
Los Angeles, California 90010

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on July 30, 1981 at Beverly Hills, California.

/s/ Berry D. Locke
BERRY D. LOCKE

Motion to Dismiss or Affirm

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vs.

CITY OF LOS ANGELES,

Appellee.

On Appeal From the Court of Appeal of the State of California, Second Appellate District, Division Four.

MOTION TO DISMISS OR AFFIRM.

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No. .....

IN THE

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October Term, 1981

MERLE E. HOLMES, individually and on behalf of all others similarly situated,

Appellants,

vs.

CITY OF LOS ANGELES,

Appellee.

MOTION TO DISMISS OR AFFIRM.

The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Court of Appeal of the State of California, Second Appellate District, on the following grounds:

1. The federal questions presented by the appeal are so unsubstantial as not to need further argument.

2. The non-federal ground upon which the judgment of the state court is based is adequate to sustain said judgment.

Statement of the Case and of the Questions Presented.

The Charter of the City of Los Angeles is a freeholders' charter framed, adopted, ratified, approved and filed under and pursuant to the former provisions of Article XI, Section 8, of the Constitution of the State of California (Calif. Stats. 1925, Resol. 5, p. 1024).

Said charter now does and, as pertinent herein, always has contained pension provisions pertaining to the retirement benefits for employees of the City of Los Angeles.

There are four different retirement systems established in the city's charter: Two of the systems serve civilian employees and the two other systems provide benefits for members who are employed by the city as firefighters or police officers.

The members of each of the retirement systems contribute to their plan by salary deductions. In the case of the two civilian systems, contributions are refundable to members upon termination of employment before retirement.

The contributions made by members of the two fire and police pension systems are not refundable upon termination of employment.

The City of Los Angeles contributes to all of its pension systems and those contributions are not payable to members as a "refund" upon termination of employment. However, no question is herein presented with respect to the "non-refundability" of city contributions.

Appellants are a class of former firefighters and police officers of the City of Los Angeles whose employment terminated for reasons other than retirement.

Appellants instituted legal action in the state court, asking that the no refund provisions of the city charter be overturned upon the two grounds that (1) the charter is "a contract of adhesion" and (2) the charter denies equal protection of the law in violation of the Fourteenth Amendment to the federal Constitution.

The city charter provisions, to which the litigation in the state court pertained, are reprinted on pages 3 through 7 of Appellants' Jurisdictional Statement and need, therefore, not be repeated herein.

The state court upheld the judgment of the trial court in favor of the City of Los Angeles and decided the case based upon both the nonfederal ground and the federal constitutional issue.

The question presented is twofold: Is the nonfederal ground upon which the state court decided the case adequate to support its decision? The Appellee respectfully submits that the nonfederal ground does constitute an adequate basis to affirm the state court, or, in the alternative, to dismiss this appeal.

Secondly: If the federal ground is a necessary basis to sustain the decision of the state court, is the federal question substantial? The Appellee respectfully submits that the federal question presented is so unsubstantial as not to require further consideration.

ARGUMENT.

The opinion of the state court is appended to Appellants' Jurisdictional Statement. It is clear that the principal basis for that court's decision was its determination that the provisions of the Charter of the City of Los Angeles do not constitute a contract of adhesion. The state court also rejected Appellants' contention that those provisions of the city charter which provide for nonrefundability of employee contributions to the city's fire and police pension systems violate the equal protection clause of the Fourteenth Amendment to the federal Constitution.

It appears to be well settled that in a case where a state court expressly bases its decision upon two grounds — one federal in nature and the other nonfederal — the Supreme Court will then inquire whether the nonfederal ground is both independent and adequate to support the decision of the state court, and, if this is so, the Court would be precluded from invoking its jurisdiction to review such case. *Fox Film Corp. v. Muller*, 296 U.S. 207; *Enterprise Irrig. Dist. v. Farmers' Mutual Canal Co.*, 243 U.S. 157, 163-164. If the nonfederal ground is truly independent, then the Court would in fact lack jurisdiction to review the federal issues decided by the state court. See: *Cramp v. Board of Public Instruction*, 368 U.S. 278. (Ref.: "Supreme Court Practice", 5th Edition, Robert L. Stern and Eugene Gressman).

Although Appellants herein have drawn in question the validity of certain provisions of the Charter of the City of Los Angeles, said provisions were upheld by the state court in the face of federal objections and the state court's construction of the nonrefundability provisions of the charter would be the basis upon which this Court should proceed to test the validity of said provisions. *Guaranty Trust Co.*

v. Blodgett, 287 U.S. 509, 513; *Kingsley Pictures Corp. v. Regents*, 360 U.S. 684, 688.

However, even if arguendo, it be assumed that the state court erred with respect to its resolution of the federal question, it is respectfully submitted that in the presence of a very strong independent and nonfederal ground, such as was relied upon by the state court (holding that the provisions of the city's charter do not constitute a contract of adhesion), this case should not be reviewed by the Supreme Court. *Murdock v. Memphis*, 20 Wall. 590, 636; *Berea College v. Kentucky*, 211 U.S. 45, 53; *Fox Film Corp. v. Muller, supra*.

The sole federal question involved is one concerning the prohibition against denial of the equal protection of law to Appellants by virtue of the nonrefundability to them of their contributions to Appellee's pension systems for firefighters and police officers vis-a-vis the refundability of employee contributions provided under the provisions governing the other two retirement systems maintained by the City of Los Angeles for its civilian employees. This, however, does not present a substantial federal question. There is, at this time, only a very small number of public retirement systems left in the United States with plan provisions mandating nonrefundability of employee contributions. No case is known where such provisions have ever been struck down on federal grounds and there are at least two federal cases upholding statutes providing nonrefundability of employee contributions to a public pension plan: *Pennie v. Reis*, 132 U.S. 426 and *Muzquiz et al. v. City of San Antonio et al.*, 520 F.2d 993.

Conclusion.

For the reasons stated herein, this appeal should either be dismissed or the decision of the state court be affirmed.

Respectfully submitted,

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